

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Michael Banziruk, Torrington

File No. 2012-013

FINDINGS AND CONCLUSIONS

Complainant brought this complaint pursuant to § 9-7b (a), General Statutes, alleging that city and elections officials in the City of Torrington were incorrectly applying General Statutes § 9-167a and thereby denying Complainant his right to vote pursuant to § 9-364a.

After the investigation of the Complainant's complaint, the Commission makes the following findings and conclusions:

1. The gravamen of this complaint is that by applying General Statutes § 9-167a (pertaining to minority representation) to the selection of "at large" candidates for municipal office, that Torrington officials through corrupt means are suppressing his vote as prohibited by § 9-364a, in that the Complainant cannot vote for the full complement of candidates eligible for election to municipal offices.
2. More specifically, Complainant alleged that because municipal officials in the City of Torrington are elected "at large"¹, by restricting the total number of choices per office on the municipal ballot to less than the total number to be elected for each office, his franchise is restricted in that he cannot allegedly exercise his "full" vote.
3. General Statutes § 9-167a, provides in pertinent part:

(a)(1) Except as provided in subdivision (2) of this subsection, the maximum number of members of any board, commission, legislative body, committee or similar body of the state or any political subdivision thereof, whether elective or appointive, who may be members of the same political party, shall be as specified in the following table:

¹ In contrast to being elected to represent a specific geographic district or subdivision within a municipality, an *at large* candidate represents a municipality in its entirety.

COLUMN I Total Membership	COLUMN II Maximum from One Party
3	2
4	3
5	4
6	4
7	5
8	5
9	6
More than 9	Two-thirds of total membership

...

4. Connecticut General Statutes §9-364a, provides in pertinent part:

*Any person who influences or attempts to influence by force or threat **the vote**, or by force, threat, bribery or **corrupt means, the speech, of any person in a primary, caucus, referendum convention or election; or wilfully and fraudulently suppresses** or destroys **any vote** or ballot properly given or cast or, in counting such votes or ballots, [Emphasis added.]*

5. Complainant alleges that the application of General Statutes § 9-167 under the circumstances, as detailed in paragraph 2 above, by the City of Torrington, results, pursuant to § 9-364a, in the suppression of his vote by corrupt means by the city, or in the alternative that the application of § 9-167a in this instance suppresses his speech at a primary or referendum, in that it restricts the number of candidates he can choose for a particular office to less than those that can be elected to that office.

6. Upon investigation, the Commission finds that the Connecticut Office of the Secretary of the State, has issued legal advice addressing the issues raised by Complainant's allegations. Specifically, the Secretary of the State, Elections Division indicated in writing that:

*We have received an inquiry regarding minority representation and restrictive voting. More specifically, we have received an inquiry regarding the ability of voters to vote for the full numbers of a specific board in the municipality. Our office has consistently advised since at least 1971 that restrictive voting **can prohibit voters from voting for the full number of members of a specific board in a municipality.** ... Finally, with regard to your concern for the rights of voters to voter for the full number of candidates to be elected, ... the United States [District Court] has upheld Connecticut's restrictive voting statutes. LoFrisco v. Schaffer, 341 F. Supp. 743 (1972). [Emphasis added.]*

7. The Commission notes that General Statutes § 9-3, provides that as Commissioner of Elections of the state the Secretary's written opinions "...shall be presumed as correctly interpreting and effectuating the administration of elections and primaries." Therefore, the Commission, based on the Secretary's written advice in paragraph 6 above, presumes that a municipality *may prohibit* voters from voting for the full number of members of a specific board in a municipality.
8. Furthermore, the Commission finds that the court in *LoFrisco*, cited in paragraph 6 above, specifically upheld the limited and restrictive voting scheme presented by Connecticut's minority representation statutes (General Statues § 9-167a), against claims of vote dilution, similar to those made by Complainant in this instance.
9. Under these circumstances, where both the Secretary of the State and the United States District Court for Connecticut, have offered consistent legal opinions upholding the propriety of limited and restrictive voting schemes, in the context of Connecticut's minority representation statute, the Commission recognizes the authority of the aforementioned opinions and the conclusions reached by each.
10. Finally, given the opinions of the Secretary of the State as Commissioner of Elections in Connecticut and the United States District Court pertaining to the legality of limited and restrictive voting schemes, the Commission finds no basis to challenge these presumptions based on whether candidates are elected "at large" by a municipality, or otherwise.
11. The Commission concludes therefore, in this instance, that alleged violations § 9-364a by a municipality's application of § 9-167 to "at large" candidates are not supported by the facts or law. The Commission for the reasons detailed herein dismisses this complaint.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That the complaint is dismissed.

Adopted this 25th day of July 2012 at Hartford, Connecticut.



Stephen E. Cashman

Chairman

By Order of the Commission